

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** November 22, 2016

**Thru:** Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

**From:** Steve Hagle, P.E., Deputy Director  
Office of Air

**Subject:** Consideration of a Petition for Rulemaking

**Docket No.:** 2016-1877-PET

**Project No.:** 2017-004-PET-NR

**Who Submitted the Petition:**

On October 27, 2016, the Texas Commission on Environmental Quality (commission or TCEQ) received a petition from Dr. Richard C. Bonart, D.V.M. (petitioner).

**What the Petitioner Requests:**

The petitioner asserts that the current rules governing dust-suppression requirements for temporary parking lots are nebulous, place an oppressive financial burden to the organizers of small events held within the City of El Paso, and are unwarranted due to the infrequency and low volume of fugitive dust emissions from temporary parking for outdoor events. The petitioner contends that the language in 30 Texas Administrative Code (TAC) §111.149(b) concerning fugitive dust control for temporary parking lots is not adequately prescriptive in its requirements. Specifically, the petitioner states that the lack of guidelines in this rule concerning watering frequency, volume per acre, and temperature adjustments forces parking lot operators to guess what actually constitutes adequate control measures. Moreover, the petitioner claims that §111.149(b) is inequitable because it ignores fugitive dust emissions from the many unpaved parking lots that exist outside the city limits, and the requirement may in fact, increase fugitive dust emissions by allowing wet dust to stick to vehicle tires and then be dragged onto adjacent pavement.

The petitioner claims that the event he organizes does not substantively increase particles with an aerodynamic diameter less than or equal to 10 micrometers (PM<sub>10</sub>) concentrations in the El Paso area. The petitioner presents data taken from several continuous air monitoring stations in the area as evidence that no exceedances of the National Ambient Air Quality Standard (NAAQS) for PM<sub>10</sub> occurred around the time of his event. Moreover, the petitioner claims that the TCEQ has not deployed adequate air monitoring capacity to fully characterize the long-term trends in PM<sub>10</sub> pollution in the El Paso area.

Based on these objections, the petitioner is requesting an amendment to §111.149(b) that would exclude certain temporary parking lots from the rule requirements. The petitioner's suggested rule revision to §111.149(b) is as follows:

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(b) In the City of El Paso, parking surfaces with more than five parking spaces shall be paved or uniformly covered with gravel. This provision shall not apply to temporary parking lots defined at lots used for less than one month, after which access is prohibited. Such temporary lots shall be required to apply water or suitable oil or chemical. Temporary parking lots used less than five days are not required to apply water, oil, or chemicals. Lots with more than 100 parking spaces shall be paved or covered by an equivalent method determined by the executive director. An equivalent method shall not include the utilization of waste materials from industrial processes.

**Recommended Action and Justification:**

The executive director recommends denial of the petition. The petitioner seeks to add an exclusion from applying water, oil, or chemicals for temporary parking lots used less than five days to §111.149(b). This rule requirement was adopted as part of the El Paso attainment demonstration state implementation plan (SIP) revision (14 TexReg 3293). The petitioner's proposed rule revision would constitute a revision to the El Paso SIP for PM<sub>10</sub> that may not be approvable by the United States Environmental Protection Agency (EPA). Section 110(l) of the Federal Clean Air Act (FCAA) states that the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the FCAA.

The petitioner contends that the language of §111.149(b) is vague and does not provide prescriptive requirements that detail an acceptable protocol for water, oil, or chemical application to unpaved temporary parking lots. The petitioner claims that the vagueness of the rule places a burden on those affected because it makes compliance with the rule a "guessing game." However, the TCEQ's position is that the absence of such prescriptive requirements affords those affected flexibility to comply with the provision in a manner feasible for each instance a temporary parking lot is used. As it is written, the rule language actually allows parking lot owners broad latitude in implementing dust suppression-control measures. The TCEQ interprets §111.149(b) to require watering of temporary parking lots only as necessary to prevent visible emissions. The City of El Paso may enforce local ordinances beyond what is specified in §111.149(b), but any additional requirements enforced by the City of El Paso would be beyond the scope of this particular rule requirement.

The requirements of §111.149(b) were proposed in 1988 and adopted in 1989. At proposal, §111.149(b) was more stringent and required parking surfaces with more than five parking spaces to be paved or covered with gravel and lots with more than 100 parking spaces to be paved or covered by an equivalent method. In response to comments received on the proposal requesting alternate dust control measures for infrequently used lots, the commission adopted the current rule requirement, which allows the more cost-effective option of applying water or suitable oil or chemical for temporary lots as necessary. These controls were evaluated as part of the attainment demonstration SIP for the El Paso area and were considered technologically and economically feasible.

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**Applicable Law:**

- Texas Government Code, §2001.021, which establishes the procedures by which an interested person may petition a state agency for the adoption of a rule; and
- 30 TAC §20.15, which provides such procedures specific to the commission.

**Agency Contacts:**

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**Attachment:**

Petition

cc: Chief Clerk, 2 copies  
Executive Director's Office  
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Stephen Tatum  
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